

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION**

VERNIE L. DAVENPORT, JR.,)	
)	
Plaintiff,)	
)	No. 07 C 50246
v.)	
)	Honorable Judge Kapala
STATE OF ILLINOIS, JUDGE MICHAEL)	
MALLON, JUDGE STEPHEN PEMBERTON,)	Magistrate Judge Mahoney
and the OGLE COUNTY, ILLINOIS CIRCUIT)	
CLERK,)	
)	
Defendants.)	

DEFENDANTS' MOTION TO DISMISS

Defendants State of Illinois, Judge Michael Mallon, Judge Stephen Pemberton, and the Ogle County, Illinois Circuit Clerk, by their attorney, LISA MADIGAN, Attorney General of Illinois, hereby request this Honorable Court dismiss Plaintiff's complaint pursuant to Fed. R. Civ. Proc. 12(b)(1). In support thereof, Defendants state the following:

1. Plaintiff filed this action seeking injunctive and declaratory relief against the State of Illinois, Judge Michael Mallon, Judge Stephen Pemberton, and the Ogle County Circuit Clerk in their official capacities. The Plaintiff's claims are based on various rulings made during the course of Plaintiff's case in the Illinois Circuit Court.
2. Plaintiff's claims are barred by the *Rooker-Feldman* doctrine, as he is seeking a collateral review of a state court decision. *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 281 (2005).
3. This Court lacks subject matter jurisdiction over Plaintiff's claims pursuant to the *Younger* abstention doctrine. *Nelson v. Murphy*, 44 F.3d 497, 501 (7th Cir. 1995).
4. Plaintiff's claims brought pursuant to 42 U.S.C. §1983 must fail as none of the Defendants are subject to suit under Section 1983 for injunctive relief. *See* 42

- U.S.C. § 1983; *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 70-71 (1989);
Kentucky v. Graham, 473 U.S. 159, 167 n.14 (1985).
5. Finally, the State of Illinois is immune from the Plaintiff's claims under the Eleventh Amendment. *Pennhurst v. Halderman*, 465 U.S. 89 (1984).
6. A supporting memorandum of law is submitted in support of this motion.

WHEREFORE, based upon the foregoing and on the issues raised in the attached Memorandum of Law, Defendants State of Illinois, Judge Michael Mallon, Judge Stephen Pemberton, and the Ogle County, Illinois Circuit Clerk respectfully move this Honorable Court to dismiss all of Plaintiff's claims with prejudice, and for such further relief that the Court finds reasonable and just.

LISA MADIGAN
Attorney General of Illinois

Respectfully submitted,

s:/ Kevin Lovellette
KEVIN LOVELLETTE
Assistant Attorney General
General Law Bureau
100 West Randolph Street, 13th Floor
Chicago, Illinois 60601
(312) 814-3720